

PT 02-19

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

SEBASTIAN CHOU)	A.H. Docket #	01-PT-0033
Applicant)	Docket #	00-100-27, 00-100-28
)		
v.)	Parcel Index #	06-07-400-014,
)		06-07-400-015
)	Barbara S. Rowe	
THE DEPARTMENT OF REVENUE)	Administrative Law Judge	
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. George Logan, Special Assistant Attorney General for the Illinois Department of Revenue; Mr. James W. Morris for Sebastian Chou.

Synopsis:

The hearing in this matter was held on October 18, 2001, to determine whether Williamson County Parcel Index Nos. (hereinafter referred to as "PIN[s]") 06-07-400-014 and 06-07-400-015 qualified for exemption during the 2000 assessment year.

Dr. Sebastian Chou, (hereinafter referred to as the "Applicant") chairman and CEO of the Geelee Foundation was present and testified on behalf of the applicant.

The issues in this matter include: first, whether the applicant was the owner of the parcels during the 2000 assessment year; secondly, whether the applicant is a charitable organization or a school; and lastly, whether these parcels were used by the applicant for exempt purposes during the 2000 assessment year. After a thorough review of the facts and law presented, it is recommended that the requested exemption be denied. In support thereof, I make the following

findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that Williamson County PINs 06-07-400-014 and 06-07-400-015 did not qualify for a property tax exemption for the 2000 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 10)

2. On March 19, 2001, the Department received the requests for exemption of Williamson County PINs 06-07-400-014 and 06-07-400-015. The assessment for PIN 06-07-400-014 was \$142,040.00. The Williamson County Board of review recommended denying the exemption. The assessment for PIN 06-07-400-015 was \$90,130.00. The Williamson County Board of review recommended denying that exemption as well.

3. On April 19, 2000, the Department denied the requested exemptions finding that the properties were not in exempt ownership and use. On May 2, 2001, the applicant timely protested the denial and requested a hearing. The hearing on October 18, 2001, was held pursuant to that request. (Dept. Ex. No. 1)

4. The applicant acquired the subject parcels by a special warranty deed dated April 24, 2000. (Dept. Ex. No. 1)

5. Located on PIN 06-07-400-014 are two buildings, one comprised of 7,932 square feet and the other of 4,000 square feet. The buildings are used for preschool education and childcare purposes. (Dept. Ex. No. 1)

6. Located on PIN 06-07-400-015 is an 8,450 square foot building known as the Delta Health Club Building. The building is used for a childcare headstart program and as a health club with aquatic exercise. (Dept. Ex. No. 1; Tr. pp. 16-18, 24)

7. The Geelee Foundation operates the Tips Childhood Academy, located on PIN 06-07-400-014. The academy is for children ages 6 weeks to 12 years. The academy serves low income and disadvantaged children. An unidentified amount of monthly fees are charged the parents of the children at the academy. (Dept. Ex. No. 1; Tr. pp. 14-15, 26-27)

8. The Geelee Foundation has no ownership interest in the subject properties. (Tr. p. 26)

9. The Geelee foundation was incorporated under the general not for profit corporation act of the State of Illinois on April 18, 2000, for:

Promoting the development, establishment, or expansion of the child care industry pursuant to [sic] ILCS 105/103.05(a)(20). Provided, that the corporation shall engage exclusively in activities qualifying as charitable, scientific, literary and educational under Section 501(c)(3) of the Internal Revenue Code, and the regulations thereunder; to distribute the monies or other property of the corporation, whether constituting income or principal to such other charitable, scientific, literary and educational organizations as the corporation may see fit provided each such other organization shall be exempt from federal income taxes under the provisions of said section 501(c)(3), to use any of the income or principal of the funds or property of the corporation in carrying out any such charitable, scientific, literary and educational purposes. (Applicant's Ex. No. 1)

10. The bylaws for the Geelee Foundation state:

In establishing fees for child care and developmental services Geelee Foundation and Tip's Childhood Academy shall waive or reduce such fees for those individuals or families who do not have the ability to pay the normal and customary fees of Tips Childhood Academy. (Applicant's Ex. No. 2)

11. In conjunction with the acquisition of the subject properties, the applicant and Geelee executed an assignment and assumption agreement with the prior owner. Geelee assumed the prior owner's interest and rights in leases and agreements. The applicant incorporated a "Memorandum of Agreement Lease" between the prior owner and Southern Illinois Hospital Services in its initial application. The term of the memorandum is five years beginning July 1, 1996 and ending June 30, 2001. The "Reservation of Rents" section of the assignment and assumption agreement states: "Assignor hereby reserves one half of the rents due are payable under the SIH lease from and after May 1, 2000." The annual rent for the Rehab. Clinic and Health Club is \$49,140.00. (Dept. Ex. No. 1; Applicant's Ex. Nos. 3, 4; Tr. pp. 20-22)

12. The applicant does not receive any rent from the Geelee Foundation for the use of

the buildings at issue. Geelee leases approximately 1/3 of the building on PIN 06-07-400-015 and both buildings on PIN 06-07-400-014 for childcare and a head start program. (Tr. pp. 18-20)

13. Southern Illinois Hospital Services leases approximately 2/3 of the building located on PIN 06-07-400-015. It operates the health club and charges fees. (Tr. pp. 18-19, 27-29)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. The applicant asserts that the subject properties qualify under either the charitable or school exemption statutes. The charitable provision is found at 35 ILCS 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, . . .
- (c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code . . . and either (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based upon an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services

The applicant also argues that the property is exempt because it is used for school purposes. That section of the statute states:

All property donated by the United States for school purposes, and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt, . . . 35 **ILCS** 200/15-30

The applicant has applied for a property tax exemption for the property it leases to Geelee and Southern Illinois Hospital Services. In order to be exempt as a school, ownership by a school is required. Wheaton College v. Department of Revenue, 155 Ill.App.3d 945 (2nd Dist. 1987). The applicant is an individual and offered no evidence that it is a school. Therefore, a school does not have an ownership interest in the properties and the properties do not qualify as exempt pursuant to the school exemption provision of the Illinois property tax code.

In order to qualify for a property tax exemption on charitable grounds, a taxpayer must show that the property was owned by a charitable organization and was exclusively used for charitable purposes. Therefore, two elements are required to entitle a parcel to exemption under

the charitable statutory provision: charitable use and ownership by a charitable organization. Inst. of Gas Tech. v. Dep't of Revenue, 289 Ill.App. 3d 779, 783 (1st Dist. 1997); Resurrection Lutheran Church v. Department of Revenue, 212 Ill.App.3d 964 (1st Dist. 1991)

The first issue to be addressed is whether the ownership of the subject properties qualifies for exemption. The applicant acquired the subject properties by a special warranty deed. The applicant is an individual, not a charitable organization. Therefore, a charitable organization does not have an ownership interest in the properties.

The applicant leases one parcel and 1/3 of the other parcel to Geelee Foundation. The applicant leases the remaining 2/3 of the second property to Southern Illinois Hospital Services for an annual rent of \$49,140.00. The statutes are clear that property leased or otherwise used with a view to profit is not exempt. Property of a non-exempt entity leased to a charitable organization was not entitled to a charitable property tax exemption. Coles–Cumberland Professional Development Corp. v. Department of Revenue, 284 Ill.App.3d 351 (1996) *leave to appeal denied*, 171 Ill.2d. 563 (1997).

In this case the property is leased by an individual to an organization that has not been established as charitable. In order to determine whether an organization and the use of property is charitable the courts have set up guidelines and criteria pursuant to those suggested in Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968). The applicant has not addressed those guidelines.

Instead, the crux of the applicant's argument is that the use of the property has not changed since acquisition by the applicant; the property was exempt from taxation under the prior owner; and therefore, it should qualify for exemption for the 2000 assessment year. The fact that the property may have been exempt in prior years is not relevant. Since a cause of action for taxes for one year is not the same as or identical with a cause of action for taxes for subsequent years, the decision that property was taxable in certain years is not *res judicata* as to status of property during subsequent years. A property owner may be required to litigate the issue of its exempt status annually. Jackson Park Yacht Club v. Department of Local

Government Affairs, 93 Ill.App.3d 542 (1st Dist. 1981); Application of County Collector of Du Page County, 157 Ill.App.3d 355 (2nd Dist. 1987); Hopedale Medical Foundation v. Tazewell County Collector, 59 Ill.App. 3d 816 (3rd Dist. 1978); Du Page County Bd. Of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461 (2nd Dist. 1995); People ex rel. Tomlin v. Illinois State Bar Association, 89 Ill.App.3d 1005 (4th Dist. 1980). In addition, althou

There has been a change in the ownership of the property because the applicant acquired the property. The assessor is authorized to issue a tax bill where real estate is purchased or otherwise transferred from a use exempt from taxation to a non-exempt use. 35 ILCS 200/9-185; American Medical Association. v. Rosewell, 237 Ill.App.3d 1097 (1st Dist. 1992) *rehearing denied, leave to appeal denied*, 149 Ill.2d 647 (1993).

The applicant also alleges that the lessee of a portion of the properties, Geelee Foundation, is exempt from federal income tax pursuant to IRC §501(c)(3) and Illinois sales tax. (Tr. p. 21). Neither of those assertions were supported by evidence, but even if they had been, the fact that an organization had been granted a letter of exemption from federal income tax or from Illinois sales tax is not determinative of the issue of whether the property of an organization claiming exemption from real estate taxes was used exclusively for exempt purposes. Decatur Sports Foundation v. Department of Revenue, 177 Ill.App.3d 696 (4th Dist. 1988); Clark v. Marian Park, Inc., 80 Ill.App.3d 1010 (2nd Dist. 1980); People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970).

In addition, the assessment for PIN 06-06-400-014 is \$142,040.00. The statutes require:

Upon filing of any application for a non-homestead exemption which would reduce the assessed valuation of any property by more than \$100,000, the owner shall deliver, in person or by mail, a copy of the application to any municipality, school district and community college district. Failure of a municipality, school district or community college to receive the notice shall not invalidate any exemption. The board shall give the municipalities, school districts and community college districts and the taxpayer an opportunity to be heard. The clerk of the board in all cases other than homestead exemptions, under the direction of the board,

shall make out and forward to the Department, a full and complete statement of all the facts in the case. The Department shall determine whether the property is legally liable to taxation. . . . 35 **ILCS** 200/16-70

The applicant did not send the required letters to the municipality, school district, or community college district. Rather, the applicant asserts that the valuation of the property is zero and therefore the letters are not required. (Tr. pp. 33-34). That is not what the statute mandates, nor do the assessments from the assessor show a zero value.

An individual, not a charitable organization or a school owns the subject properties. The use of the parcels by the owner is as leased property. The parcels are not used, by the owner, for charitable or school purposes. Therefore, the properties do not qualify for a property tax exemption.

It is recommended that Williamson County PINs 06-06-400-014 and 06-06-400-015 remain on the tax rolls for the year 2000 and be assessed to the applicant for the period of April 24, 2000 through December 31, 2000, the portion of the 2000 assessment year that the applicant owned the properties.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
April 2, 2002